

**December 8, 1998**

**HOUSE JUDICIARY COMMITTEE**

**TESTIMONY** of Jim Hamilton

**Mr. Chairman, Members of the Committee, thank you for the opportunity to address you on the momentous issue of impeachment now before you.**

**I wish to focus mainly on the abuse of power allegations made by Mr. Starr in items 10 and 11 of his submission to the Committee, and by Mr. Schippers in item 14 of his reformulation of the charges. Read together, their assertions are that President Clinton, in addition to committing perjury, abused his power by various other actions.**

**First, by lying to the American people and the Congress about his relationship with Ms. Lewinsky.**

**Second, by lying to his wife, the Cabinet and his present and former staff about that relationship, which caused some of them to repeat his falsehoods to the Grand Jury, the public, or Congress.**

**Third, by repeatedly and unlawfully invoking executive privilege to conceal his personal misconduct from the Grand Jury.**

**And fourth, by refusing six invitations to testify before the Grand Jury and by declining to answer relevant questions when he did testify in August 1998.**

**A central question before the Committee and the Congress is whether these alleged abuses of power, assuming they are proven true, rise to the level of impeachable offenses. In my view they do not.**

**A proper starting point is the abuse of power allegations in Article II of the impeachment resolution against President Nixon that caused this Committee to vote 28-10 to impeach him. The contrast between President Nixon's conduct and President Clinton's conduct is striking.**

**This Committee voted to impeach Nixon for the following five abuses of power:**

**1. For causing the Internal Revenue Service to initiate audits and investigations of Nixon enemies, and to provide his associates with information about these enemies for the President's political benefit.**

**2. For causing the FBI and the Secret Service to engage in unlawful wire taps for the President's political advantage and for causing the FBI to conceal wire tap evidence.**

**3. For maintaining a secret investigation unit -- The Plumbers -- that, using CIA resources and campaign contributions, engaged in various unlawful covert activities, including the break-in of the office of Daniel Ellsberg's psychiatrist.**

**4. For allowing conduct that impeded the investigations of the break-in of the DNC headquarters, the ensuing coverup, and other misdeeds.**

**5. For interfering with the FBI, the Criminal Division, the Watergate Special Prosecutor's Office, and the CIA for personal political advantage. This interference included Nixon's firing of Special Prosecutor Cox and his attempts to abolish the Special Prosecutor's Office in order to stymie its investigations.**

**Mr. Chairman, this conduct rightly was considered to constitute "high Crimes and Misdemeanors" that justified impeachment. To use the words of George Mason, who proposed the phrase "high Crimes and Misdemeanors," Nixon's conduct constituted "great and dangerous offenses" against the state that amounted to "acts to subvert the Constitution."**

**The notion of "great and dangerous offences" against the state captures the essence of what an impeachable offense should be. It must, as Alexander Hamilton said, "relate chiefly to injuries done to the society itself." A President should not be impeached to subject him to punishment, but rather to protect the state and society against "great and dangerous offenses" that might reoccur if he is allowed to remain in office.**

**I respectfully submit that the alleged abuses by President Clinton do not indicate that he is a danger to the nation.**

**Lying to the public and to his Cabinet and aides is disgraceful, but if we would impeach all officials who lie about personal or official matters I fear that the halls of government would be seriously depleted. Other Presidents -- for example, Lyndon Johnson as to Vietnam -- have not been candid in their public and private statements. There must be a higher bar for impeachment.**

**It is true that Article I of the impeachment resolution against Nixon charged that he misled the public about the scope of his administration's investigation of Watergate misconduct and the lack of involvement by administration and reelection committee personnel in this misconduct. But**

**these statements involved lies about official actions and were part of a massive coverup of government misdeeds. This is far different than lies about private consensual sexual conduct.**

**The claim that unsuccessfully asserting executive privilege to the Grand Jury is impeachable is extraordinarily thin. The President did so upon the advice of counsel and the District Court recognized that the President's conversations were presumptively privileged, although it found that the needs of the criminal justice system outweighed that privilege. At no time did the court suggest that the privilege was claimed in bad faith.**

**Losing a privilege argument should not present grounds for removal from office. As the Committee may know, I had my own privilege battle with Mr. Starr about**

**whether Vince Foster's attorney-client privilege survived his death, which I won in the Supreme Court. Even at my angry moments about that case -- and there have been some -- I would not contend that Mr. Starr should be removed from office under the good cause provision of the Independent Counsel Act simply because he failed to convince the Supreme Court that he was right.**

**Neither the President's reticence to appear before the Grand Jury nor his failure to answer certain questions put by the prosecutors should constitute impeachable offenses. The President was well aware that he was facing a hostile prosecutor of whom he had much to fear. He was not under subpoena and thus had no obligation to appear at a time certain. Moreover, Mr. Starr agreed to the rules that allowed the President to decline to answer certain questions**



**in his Grand Jury deposition. In these circumstances, to brand his conduct as impeachable is untenable.**

**The claim that the President lied under oath, of course, is more troubling than these other allegations against President Clinton. But lying about private consensual sexual conduct seems more appropriately designated a low crime rather than a high crime. While reprehensible, it is not a "great and dangerous offense" against the state that demonstrates the necessity of removing the President from office to protect the nation from further abuses.**

**I readily concede that lies under oath about treason, bribery, the break-in at the DNC, or national security matters could be high crimes and thus impeachable, but the conduct at issue seems of a different character.**

**The Committee should recall that the claim that Nixon fraudulently evaded his tax obligations -- which essentially involved private, not official, wrongdoing -- was not made part of the impeachment charges against him.**

**Mr. Chairman, because this nation requires a strong, secure presidency, this Committee and Congress should be chary of making impeachment too easy. Long ago in 1691, Solicitor General, later Lord Chancellor, Somers told the British Parliament that "the power of impeachment ought to be, like Goliath's sword, kept in the temple, and not used but on great occasions."**

**In a similar vein, Justice Joseph Story wrote that impeachment is "intended for occasional and extraordinary cases, where a superior power, acting for the whole people,**

**is put into operation to protect their rights, and to rescue their liberties from violation."**

**Mr. Chairman, we must guard against turning our system into a parliamentary one where a national election can be negated by a legislative no confidence vote. This is particularly true because the Congress has another tool with which to express its strong disapproval of the President's actions -- a concurrent resolution of censure.**

**With the Chair's permission, I will submit for the record several articles I have written recently showing that a concurrent resolution of censure would be fully constitutional and in accordance with Congressional practices. These articles also contend that a sharp censure coupled with a significant agreed-on fine would be an**

**appropriate remedy. I will be pleased to expound on my views if the Committee so desires.**

**Some argue that use of a censure resolution would injure the Presidency by setting a precedent that would make censure commonplace. I have no doubt that censure resolutions, if judgment is not exercised and partisanship abounds, could be used unwisely to weaken the Presidency. But how much more harm could be caused by impeaching a President for actions that, while deplorable, do not amount to "great and dangerous offenses" against the state or require his removal to protect the nation.**

**With all deference Mr. Chairman, this is a time for statesmanship, wisdom and conscience, not partisan politics. In my judgment, a vote for impeachment along party lines would be a horrendous result from which the**

**Presidency and the nation would suffer for years to come.**

**The goal should be to end this matter now in a non-partisan fashion that appropriately sanctions the President and allows the government and the nation to return to the other pressing problems that we face.**

**Thank you for your attention.**